

Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, DC 20554

FEB 15 2001

In the matter of:

Request for Commission Review by
Levittown Union Free School District
of Decisions of Universal Service Administrator
and Common Carrier Bureau

FCC MAIL ROOM

Docket Nos. 97-21 and 96-45

Ref.: Common Carrier Bureau Decision DA 01-204
Form 471 Application Number 144841
Funding Request Number 233511
Entity Number: 123940

In its referenced decision, DA 01-204, the Accounting Policy Division of the Common Carrier Bureau dismissed, as untimely, an appeal dated November 27, 2000, filed on behalf of Levittown Union Free School District. By this appeal, we ask the Commission to reconsider this dismissal and to instruct the Universal Service Administrator to implement SLD appeal notification procedures to prevent a reoccurrence of the situation faced by Levittown and other E-rate applicants.

Background on Levittown's SLD and FCC appeals:

In its referenced Form 471 for program year two, Levittown applied for Internal Connection discounts on an extensive Internet system serving ten schools (and tied together through a telecom carrier provided WAN). In its funding decision, dated November 2, 1999, the SLD denied the entire amount arguing that more than 30% of the requested amount included ineligible items (specifically noted as: an on-site technician, WAN card, and firewall).

In a timely letter dated November 22, 1999, E-Rate Central, on behalf of Levittown, appealed this decision arguing that the two major items noted as ineligible by the SLD had been clearly marked as such by the applicant and excluded from the original requested amount.

On November 17, 2000, having received no decision, an e-mail was sent to the SLD requesting the status of this appeal. On November 22, 2000, the SLD advised us that the appeal had been denied in an Administrator's Decision on Appeal Letter dated May 10, 2000.¹ Neither

¹ The Administrator's Decision on Appeal contained little new information over and above the original decision. It does include a reputed total dollar amount of ineligible items included in the original request, but provides no breakdown of that total. The subsequent e-mail exchange suggests two possible sources of confusion.

- a. WAN interface cards: Our SLD appeal reluctantly accepted the point that these cards (at \$980.00) might be ineligible. As noted in the e-mail exchange, however, WAN interface cards have since been deemed eligible as Internal Connection devices. The SLD apparently believes that, since this was a recent decision, the cards were ineligible at the

Levittown nor E-Rate Central has any record of the SLD's Appeal Letter having been received in May.

In an appeal dated November 27, 2000, we asked the Commission to review the Administrator's decision and to instruct the SLD to fund the original request (less 6.4% subsequently deemed ineligible). As a threshold issue, however, since more than 30-days had elapsed since the Administrator's reported decision, we asked that the date of the e-mail and fax notification, as actually received by Levittown, be treated as the date of the Administrator's decision.

Common Carrier Bureau decision DA 01-204:

In its order adopted January 26, 2001, the Common Carrier Bureau dismissed Levittown's appeal based solely on the timeliness of the appeal. The decision did not address the underlying merits of Levittown's appeal on the referenced funding request.

The Bureau's two-paragraph order was similar to many other orders dismissing Universal Service Administrator's appeals as untimely. The issue of Levittown not receiving the Administrator's decision of May 10, 2000, was addressed only in a footnote, indicating in part:

Merely stating that a letter was not received at the address provided to SLD and to which prior correspondence had been successfully mailed is insufficient grounds for reconsideration. *See Request for Review by Whitehall City School District*, Docket Nos. 96-45 and 97-21, Order, DA 00-1892 (rel. August 18, 2000); *Juan Galiano*, Memorandum Opinion and Order, 5 FCC Rcd 6442, 6443 (1990) ("[I]f the Commission were to entertain and accept unsupported arguments that letters mailed in Commission proceedings were not delivered...procedural havoc and abuse would result.")

We agree completely with the Common Carrier Bureau that "procedural havoc and abuse" is to be avoided. Nevertheless, we believe that there are simple steps that can be, and should have been, taken to alleviate situations — admittedly few in number, but extremely important to affected applicants — in which SLD appeal decisions may go astray.

Argument and suggestion:

There are a number of important situations in which the Schools and Libraries Division needs to correspond with applicants in a timely and an assured manner. In procedural cases involving Program Resolution, Program Integrity Assurance, audits, incorrect form submittal, etc., the SLD typically takes a proactive stance relying on phone calls, facsimile, e-mails, or mailings ("Return Receipt Requested").

time of the Levittown appeal. We argue that WAN interface cards always should have been considered eligible and should be considered such in this appeal.

- b. On-site technician: Charges for an on-site technician (at \$17,375) were listed in the attachment to the Form 471, but had been marked as "Ineligible" and had been excluded from the requested amount. This point was explicitly noted our SLD appeal.

Accepting that the WAN interface cards are eligible, and that the on-site technician costs had never been included in the requested amount, the only potentially ineligible items would be an allocation for firewall warranty and installation. On this basis, we calculate the pre-discount value of potentially ineligible items as \$5,966.20 — only 6.4% of the total pre-discount \$93,729.50 request. At this level, the SLD should be instructed to reinstate funding, less the 6.4% ineligible amount, for the referenced FRN.

The most common and time sensitive correspondence from the SLD, both involving 30-day response windows, are initial Funding Commitment Decisions Letters ("FCDLs") and Administrator's Decision on Appeal Letters ("Appeal Letters"). Since these decision letters involve funding for thousands, or even millions, of dollars and require immediate attention by the applicants, we believe it is incumbent upon the SLD to take at least minimal steps to assure that these letters are, in fact, delivered to the applicants in a timely manner. This does not happen.

In the case of initial funding decisions, the situation is at least mitigated by the SLD's efforts to publicize each regular funding wave. Most applicants awaiting FCDLs know when weekly waves are being processed. Advanced notice of funding waves is provided to both state E-rate coordinators and to local legislators who can alert applicants. Wave data, on a state-by-state basis, is posted weekly on the SLD's Web site and can be examined by expectant applicants. Once an applicant knows that a FCDL is expected, special precautions can be taken to assure that delivery occurs. If a FCDL does not arrive on schedule, the applicant can request a duplicate in sufficient time to meet the 30-day appeal deadline. This is not a completely fail-safe system,² but it gives applicants at least a chance if and when decision letters do not arrive as expected.

The SLD's process of issuing Appeal Letters provides no back up at all. In most cases, an appellant has no idea of when an Appeal Letter is expected. This is part of a broader problem involving extensive delays in responding to applicant appeals.³ There is no timetable for appeal decisions, no status information available on appeals in progress, and no public information on appeal decisions. There is no normal channel for an applicant to proactively anticipate an Appeal Letter. If a decision is rendered, but no Appeal Letter appears, an applicant has no indication that the FCC appeal window is closing.

Based on the number of the appeals that the FCC has dismissed as untimely, it is clear that there is some problem leading many appellants to miss the 30-day FCC appeal window. Before attributing this timing failure entirely to these appellants, both the SLD and the FCC should take all reasonable steps to assure that the problem does not lie with the SLD appeal process.

We believe that, at a minimum, consistent with the SLD's practice on funding commitment decisions (and, indeed, with the FCC's practice on its own E-rate appeal decisions), notices of SLD appeal decisions should be posted, as issued, on the SLD's Web site.

Appeal requests:

As a matter of general policy, and by this appeal, we ask the Commission to instruct the SLD to revise its procedures for notifying appellants of Administrator's Decisions on Appeal. Given the importance of these decisions, and the short time frame allowed for further appeal to the Commission, the SLD should take all reasonable steps to assure that its decisions are properly conveyed to the appellants. Ideally, SLD appeal decision letters should be mailed "Return Receipt Requested." At a minimum, the SLD should post appeal decision notifications on its Web site.

² A better approach would be for the SLD to mail these letters "Return Receipt Requested," then follow up (and allow additional appeal time) when receipts were not returned.

³ As of the SLD Committee Meeting on January 29, 2001, for example, the SLD indicated that it had received 2038 program year three appeals since funding began last spring, but that only 75 decisions had been issued.

With regard to Levittown's appeal, we ask the Commission to reverse the Common Carrier Bureau's decision and to accept FCC appeal as having been filed in a timely manner. Such a decision would recognize the problem of SLD notification and would permit the consideration of the underlying merits of Levittown's original appeal.

In fairness to others, whose FCC appeals may have been dismissed as untimely because of reputed SLD notification problems, we suggest that the Commission permit these appellants to petition the Commission for a rehearing of the timeliness of their appeals. In order to prevent "procedural havoc and abuse" on this process, the Commission should set a reasonable time limit for petition and should make clear that petitions will be accepted for consideration only if the original FCC appeal clearly identified a problem with the timely receipt of the Administrator's Decision on Appeal.

Respectfully submitted,

By: _____
Winston E. Himsworth
E-Rate Central
Nassau BOCES
1196 Prospect Avenue
Westbury, NY 11590
On behalf of Levittown UFSD

Dated: February 14, 2001

Attachments: I - Levittown SLD appeal dated November 22, 1999
II - E-Rate Central/SLD e-mail exchange dated November 17-27, 2000
III - Administrator's Decision on Appeal dated May 10, 2000
IV - Levittown FCC appeal dated November 27, 2000
V - Common Carrier Bureau Decision DA 01-204 released January 29, 2001

Attachment I

November 22, 1999

Letter of Appeal

Schools and Libraries Division
Box 125 – Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981

FCD Letter:

Applicant Name:	Levittown UFSD
Form 471 Application Number:	144841
Billed Entity Number:	123940
Funding Request Number:	233511

E-Rate Administrators:

In its referenced Form 471, Levittown applied for Internal Connection discounts on an extensive LAN system serving ten schools (and tied together through a telecom carrier provided WAN). In its funding decision on this FRN, the SLD denied the entire amount arguing that more than 30% of the requested amount included ineligible items (specifically noted as: an on-site technician, WAN card, and firewall).

As shown in the Exhibit 17 attachment of Levittown's Form 471 (copy attached), however, the two major items noted as ineligible by the SLD were clearly marked as such by the applicant and excluded from the requested amount. Specifically,

1. The PIX firewall 520-1K and the 1PT 10/100 MID Autosensing (see top of page 3), totaling \$16,200, were excluded from the eligible hardware costs (shown as \$49,479.50). (The Cisco 1500 that attached to the firewall was assumed to be eligible.)
2. The 1 yr. Onsite Support (see middle of page 4), totaling \$17,375, was also excluded. (The warranty costs, shown separately on page 3 as \$26,250, was treated as eligible, but perhaps should have excluded \$2,320 allocated to the firewall warranty.)

The two WAN interface cards (see bottom of page 2), totaling \$980 (after Cisco's educational discount), were included on the presumption that equipment required to connect to a telecom carrier provided WAN should be eligible. If ineligible, these cards represented only 2% of the total requested amount.

Letter of Appeal
Page 2
November 22, 1999

The FRN included the entire installation charge of \$18,000 (see top of page 4), but perhaps should have been reduced by \$3,646.20 (or 20.25%) to reflect the proportion of hardware charges deemed ineligible (\$17,600/\$86,855, pre-Cisco discount).

Overall, the referenced FRN included requested an amount reflecting the following components:

Cisco hardware (less firewall, post Cisco discount)	\$49,479.50
Installation	18,000.00
One-year warranty (excl. on-site support)	<u>26,250.00</u>
Total FRN (before E-rate discount)	\$93,729.50

Arguably, this amount should be reduced by the following amounts:

WAN interface cards (post Cisco discount)	\$980.00
Warranty on firewall	2,320.00
Ineligible portion of installation	<u>3,646.20</u>
Total reduction	\$ 6,946.20

Note that the reduced amounts represent only 7.4% of the originally requested total. On this basis, we believe that the referenced FRN should have been reduced by no more than amount shown and should not have been entirely denied. We would appreciate your review and concurrence.

Please call us if you have any questions. Thank you for your consideration.

Sincerely,

Winston E. Himsworth
On behalf of Nassau County BOCES

Attachment

/abm



Levittown Union Free School District LAN/WAN Proposal



Interworks
Project Sheet

INTERNET With T1 Lines Provided by Lightpath

Approach:

- * Memorial Education Center used as the Hub.
- * Each connecting school requires a T-1 to LMEC and a CISCO router upgrade
- * A Pix Firewall will be used to secure our Internal Network from intruders
- * Memorial Education Center requires an ISP link
- * Interworks will provide support and maintenance for the network

<u>QTY</u>	<u>School</u>	<u>One-Time Costs</u>	<u>Monthly Recurring</u>	<u>Unit Price</u>	<u>Purchase Price</u>	<u>Year 1</u>	<u>Year 2</u>
T-1 Service Lightpath							
1	Division Ave HS	\$250.00	\$367.00	\$0.00	\$0.00	\$4,654.00	\$4,404.00
1	MacArthur HS	\$250.00	\$367.00	\$0.00	\$0.00	\$4,654.00	\$4,404.00
1	Salk Middle School	\$250.00	\$367.00	\$0.00	\$0.00	\$4,654.00	\$4,404.00
1	Wisdom Middle School	\$250.00	\$367.00	\$0.00	\$0.00	\$4,654.00	\$4,404.00
1	Abbey Lane	\$250.00	\$367.00	\$0.00	\$0.00	\$4,654.00	\$4,404.00
1	EastBroadway	\$250.00	\$485.00	\$0.00	\$0.00	\$6,070.00	\$5,820.00
1	Lee Road	\$250.00	\$485.00	\$0.00	\$0.00	\$6,070.00	\$5,820.00
1	Northside	\$250.00	\$367.00	\$0.00	\$0.00	\$4,654.00	\$4,404.00
1	Summit	\$250.00	\$367.00	\$0.00	\$0.00	\$4,654.00	\$4,404.00
1	Gardiners	\$250.00	\$367.00	\$0.00	\$0.00	\$4,654.00	\$4,404.00
10	Total T-1 Service Lightpath	\$2,500.00	\$3,906.00	\$0.00	\$0.00	\$48,372.00	\$46,872.00
Remote School Connectivity							
10	1PT 10/100 2wic slots	\$0.00	\$0.00	\$2,295.00	\$22,950.00	\$22,950.00	\$0.00
10	1PT serial w/frt1/11 DSU/CSU	\$0.00	\$0.00	\$1,000.00	\$10,000.00	\$10,000.00	\$0.00
10	Cisco 2600 series, IP feature set	\$0.00	\$0.00	\$15.00	\$150.00	\$150.00	\$0.00
Internet Connectivity located at LMEC							
1	1PT 10MB 1MOD slot 2 wic	\$0.00	\$0.00	\$1,995.00	\$1,995.00	\$1,995.00	\$0.00
✓ 2	2PT Serial Wan Interface card	\$0.00	\$0.00	\$700.00	\$1,400.00	\$1,400.00	\$0.00
1	Cisco 2600 series, IP feature set	\$0.00	\$0.00	\$15.00	\$15.00	\$15.00	\$0.00
1	Cisco v.35, DTE Male 10 Ft	\$0.00	\$0.00	\$100.00	\$100.00	\$100.00	\$0.00

*Calculation
Lightpath*

<u>QTY</u>		<u>QTY</u>	<u>School</u>	<u>One-Time</u> <u>Costs</u>	<u>Monthly</u> <u>Recurring</u>	<u>Unit</u> <u>Price</u>	<u>Purchase</u> <u>Price</u>	<u>Year 1</u>	<u>Year 2</u>
Installed									
1			Internet Connection Security Protection at LMEC						
		1	PIX firewall 528-1k 233MHz, 2-10/	\$0.00	\$0.00	\$18,000.00	\$18,000.00	\$18,000.00 X	\$0.00
		1	1PT 10/100 MID Autosensing	\$0.00	\$0.00	\$200.00	\$200.00	\$200.00 X	\$0.00
Warrant			CISCO 1500 Series for Service connections to Firewall						
		1	16PT 10BT-SNMP Managed	\$0.00	\$0.00	\$825.00	\$825.00	\$825.00	\$0.00
			Core Connectivity Router Cisco 7200						
		1	7200, 6Slot Chassis 1AC PWR	\$0.00	\$0.00	\$5,000.00	\$5,000.00	\$5,000.00	\$0.00
		1	7600 AC PWR supply	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
22		1	Power Cord, 110V	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		1	7200 series IOS IP	\$0.00	\$0.00	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00
		1	7200 I/O Cont W/Fast ether	\$0.00	\$0.00	\$2,500.00	\$2,500.00	\$2,500.00	\$0.00
1 Yr On:		1	7200 I/O PCICIA Flash 16MB	\$0.00	\$0.00	\$400.00	\$400.00	\$400.00	\$0.00
		1	7200 Prog Eng 150 1MB Sram	\$0.00	\$0.00	\$4,500.00	\$4,500.00	\$4,500.00	\$0.00
		1	7200 NPE 32 MB DRAM	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		1	4Port T1 W/Integrated DSU/CSU	\$0.00	\$0.00	\$7,250.00	\$7,250.00	\$7,250.00	\$0.00
		1	8Port T1 W/Integrated DSU/CSU	\$0.00	\$0.00	\$11,600.00	\$11,600.00	\$11,600.00	\$0.00
ISP Ser			TOTAL Cisco Hardware	\$0.00	\$0.00	\$56,395.00	\$56,885.00	\$56,885.00	\$0.00
1			Education Discount	\$0.00	\$0.00	\$16,918.50	\$26,065.50	\$26,065.50	\$0.00
1			TOTAL Cisco Hardware	\$0.00	\$0.00	\$39,476.50	\$60,819.50	\$60,819.50	\$0.00

2/19 Net: 49,479.50
 Inst: 18,000.00
 1yr. maint: 26,250.00 - 2187.50/m
 93,729.50

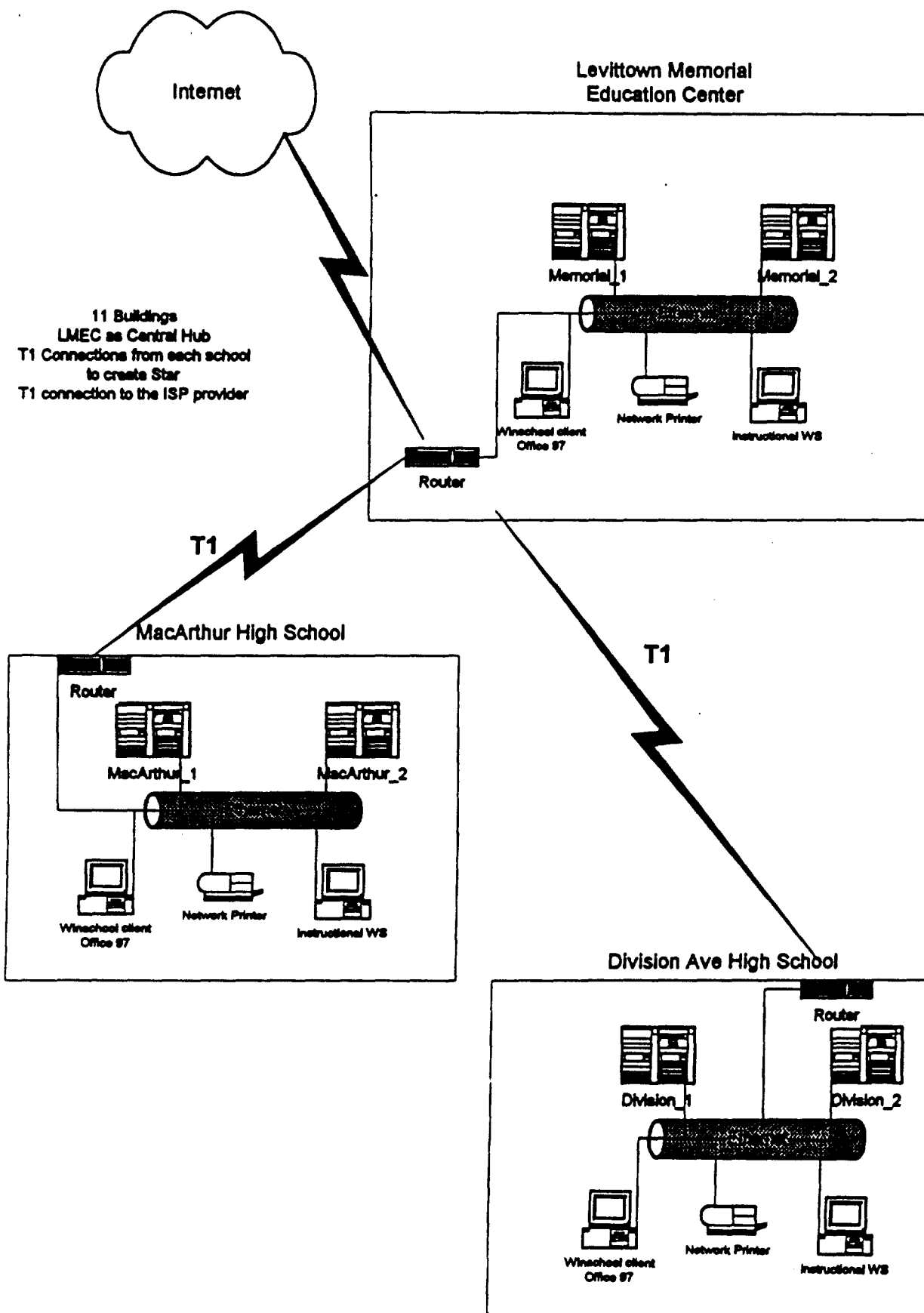
<u>QTY</u>	<u>School</u>	<u>One-Time Costs</u>	<u>Monthly Recurring</u>	<u>Unit Price</u>	<u>Purchase Price</u>	<u>Year 1</u>	<u>Year 2</u>
Installation							
1	Configuration, Setup, Installation	\$18,000.00	\$0.00	\$0.00	\$0.00	\$18,000.00	\$0.00
	Total Installation	\$18,000.00	\$0.00	\$0.00	\$0.00	\$18,000.00	\$0.00
Warranty							
	2600 Maintenance 8x5x4 PKG5	\$5,742.00	\$0.00	\$0.00	\$0.00	\$5,742.00	\$5,742.00
	1516 Maintenance 8x5x4 PKG01	\$123.00	\$0.00	\$0.00	\$0.00	\$123.00	\$123.00
	7206 Maintenance 8x5x4 PKG14	\$4,205.00	\$0.00	\$0.00	\$0.00	\$4,205.00	\$4,205.00
	PIX Maintenance 8x5x4 PKG12	\$2,320.00	\$0.00	\$0.00	\$0.00	\$2,320.00	\$2,320.00
22	AIS-INST-3800	\$13,860.00	\$0.00	\$0.00	\$0.00	\$13,860.00	\$13,860.00
	Total Warranty	\$26,250.00	\$0.00	\$0.00	\$0.00	\$26,250.00	\$26,250.00
1 Yr Onsite Support							
	Professional Services	\$17,375.00	\$0.00	\$0.00	\$0.00	\$17,375.00	\$17,375.00
	TOTAL 1 Yr Onsite Support	\$17,375.00	\$0.00	\$0.00	\$0.00	\$17,375.00	\$17,375.00
	TOTAL Cisco/Interworks Solution	\$61,625.00	\$0.00	\$39,476.50	\$60,819.50	\$122,444.50	\$43,626.00
ISP Services:							
1	Monthly access charge	\$0.00	\$995.00	\$0.00	\$0.00	\$11,940.00	\$11,940.00
1	LMEC T1 to ISP Loop charge	\$0.00	\$501.00	\$0.00	\$0.00	\$6,012.00	\$6,012.00
	Total ISP Services	\$0.00	\$1,496.00	\$0.00	\$0.00	\$17,952.00	\$17,952.00
	Total WAN	\$64,125.00	\$5,402.00	\$39,476.50	\$60,819.50	\$169,768.50	\$108,449.00

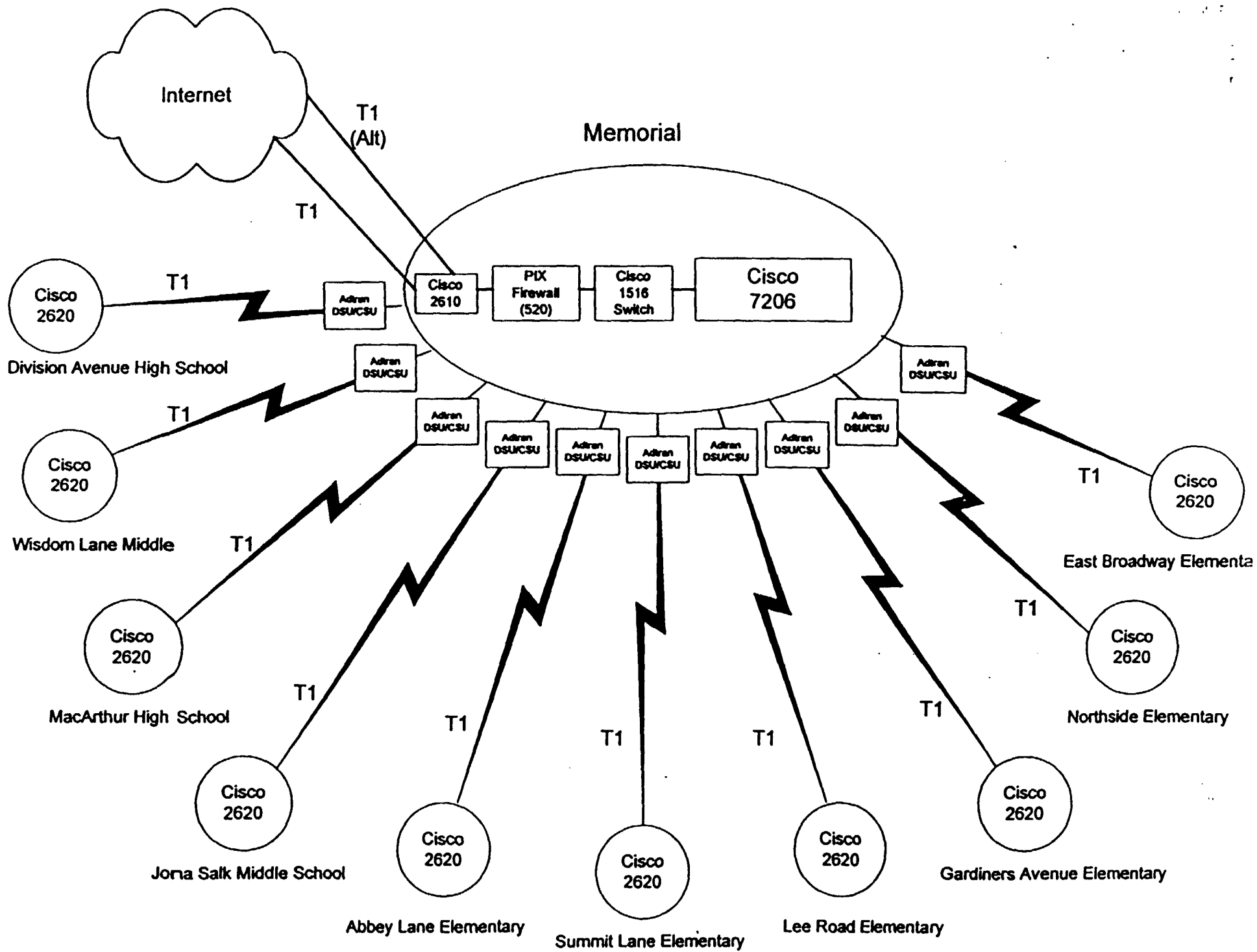
No. maintenance

- Includes

) Call Center
by phone

Levittown UFSD Wan





Subject: Re: Outstanding PY2 Appeals
Date: Mon, 27 Nov 2000 09:46:39 -0500
From: Winston Himsworth <whimsworth@CentralEd.com>
Reply-To: whimswor@mail.nasbores.org
Organization: Central Ed
To: gmcdonald@universalservice.org

George,

Thanks.

Re. your comment on the on-site technician: The attachment to the 471 explicitly noted that the \$17,375 for onsite support was "Ineligible;" it was NOT included in the total requested amount. The only maintenance included was for the separate warranty charges (which we agree erroneously included \$2320 for the firewall).

Win

gmcdonald@universalservice.org wrote:

> Win,
>
> I'll fax you a copy shortly. The WAN decision wasn't finalized until late
> May, after this appeal decision was sent, so the WAN Interface Card was
> deemed ineligible in this decision. The other significant component deemed
> ineligible was an on-site technician.
>
> I'm sorry this decision letter didn't catch up with you last spring.
>
> George
>
> -----Original Message-----
> From: Winston Himsworth [mailto:whimsworth@CentralEd.com]
> Sent: Saturday, November 25, 2000 3:18 PM
> To: gmcdonald@universalservice.org
> Subject: Re: Outstanding PY2 Appeals
>
> George,
>
> Would it be easy to fax me a copy of the Levittown appeal decision
> (Application
> 144841
> FRN 233511)? We never got a copy.
>
> I would have thought this was a winning appeal, particularly after your
> recent
> decisions on WAN cards, so I'd like to see the rationale even if it's too
> late
> to appeal to the FCC.
>
> Thanks.
>
> Win
>
> gmcdonald@universalservice.org wrote:
>
> > Win,
> >
> > On Levittown, the appeal was denied, and the Administrator's Decision on
> > Appeal Letter was sent on 5/10/00.

> >
> > On Nassau County, I'm advised the application is ready to be committed and
> > will be committed the next time we run a wave of pre-commitment FY2
> > Appeals.
> >
> >
> > Hope this is helpful.
> >
> > George
> >
> > -----Original Message-----
> > From: Winston Himsworth [<mailto:whimsworth@CentralEd.com>]
> > Sent: Friday, November 17, 2000 2:11 PM
> > To: George McDonald
> > Subject: Outstanding PY2 Appeals
> >
> > George,
> >
> > On yesterday's CCSSO call, Linda Schatz suggested we refer any undecided
> > PY2
> > appeals to you. Here's one (maybe two):
> >
> > 1. Levittown UFSD
> > Billed Entity 123940
> > Application 144841
> > FRN 233511
> > Appeal letter dated 11/22/99, Fedex delivery the next day
> > Issue: Ineligible items not over 30%
> > Action: Have heard nothing
> >
> > 2. (Maybe OK, but no FCDL yet)
> > Nassau County BOCES
> > Billed Entity 123875
> > Application 147563
> > FRN N/A
> > Appeal letter dated 10/4/99
> > Issue: Mobile service item excluded from data entry
> > Action: SLD letter 8/22/00 indicating that item was approved for data
> > entry.
> > No
> > further notification.
> >
> > Thanks for any help.
> >
> > Win Himsworth



UNIVERSAL SERVICE
ADMINISTRATIVE CO.

SCHOOLS AND LIBRARIES DIVISION

Box 125 – Correspondence Unit
100 South Jefferson Road
Whippany, New Jersey 07981

Attachment III

Administrator's Decision on Appeal - Funding Year 1999-2000

May 10, 2000

Winston E. Himsworth
Levittown Union Free School District
Abbey Lane and Ranch Lane
Levittown, NY 11756

Re: Billed Entity Number: 123940
Application Number: 144841
Funding Request Number(s): 233511
Your Correspondence Dated: 11/22/99

After thorough review and investigation of your appeal, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company has resolved your appeal seeking approval of additional discounts for the second program year. This letter addresses our decision concerning each Funding Request Number that was included in your letter of appeal for the Application Number cited above. If your letter of appeal addressed more than one Application Number, a separate letter will be issued to inform you of our decision on the appeal of each Application Number.

Funding Request Number: 233511
Decision on Appeal: Denied in full
Denial Reason(s):

- Ineligible service/product - Your funding request included more than 30% of ineligible services which resulted in the denial of the entire amount of the FRN under program rules. The request includes WAN Interface Card, Warranty on Firewall, Installation of Firewall and on site technician which are ineligible items under the universal services program. These items represent over 35% (\$33,196.20) of the requested amount.

If you feel further examination of your application is in order, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted to the SLD Web Site at <www.sl.universalservice.org>. You must file your appeal with the FCC no later than 30 days from the date of the issuance of this letter, in order for your appeal to be timely filed.

You should now move ahead, if you haven't already done so, with your Form 486 and related post-commitment arrangements for services for which funds have been committed and services have begun to flow. We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:)	
)	
Request for Review by)	Docket Nos. 97-21 and 96-45
Levittown Union Free School District)	
of Decision of Universal Service Administrator)	
)	

Ref.:	Form 471 Application Number	144841
	Funding Request Number	233511
	Entity Number:	123940

In its referenced Form 471 for program year two, Levittown applied for Internal Connection discounts on an extensive Internet system serving ten schools (and tied together through a telecom carrier provided WAN). In its funding decision, dated November 2, 1999, the SLD denied the entire amount arguing that more than 30% of the requested amount included ineligible items (specifically noted as: an on-site technician, WAN card, and firewall).

In a timely letter dated November 22, 1999, E-Rate Central, on behalf of Levittown, appealed this decision arguing that the two major items noted as ineligible by the SLD had been clearly marked as such by the applicant and excluded from the original requested amount. We further argued that any other ineligible items, included in the request, accounted for no more than 7.4%; as such, the FRN should have been reduced by a corresponding amount. It should not have been denied entirely. A copy of the November 22nd appeal letter, together with associated attachment, is enclosed as Attachment I. (Please note that the handwritten eligibility explanations and funding request calculation on the attachment are as they appeared in the original Form 471 submission.)

On November 17, 2000, having received no decision, an e-mail was sent to the SLD requesting the status of this appeal. On November 22, 2000, the SLD advised us that the appeal had been denied in an Administrator's Decision on Appeal Letter dated May 10, 2000. (A copy of the exchange of e-mails is enclosed as Attachment II.) Neither Levittown nor E-Rate Central has any record of the SLD's Appeal Letter having been received in May.

By this correspondence, we ask, first, that the Commission accept this appeal as having been filed in a timely manner within 30 days of the SLD's notification, as actually received by Levittown, of the SLD Administrator's decision. Although we did not see the SLD's May 10th letter until a copy was recently requested, we have no reason to believe that it was not mailed, only that we did not receive the May version.

Given the magnitude of funding involved in the E-rate program, and program rules that require applicants to appeal decisions within a narrow 30 day window, we believe that the SLD must take steps to assure timely delivery of its decisions. At a minimum, consistent with the SLD's practice on funding commitment decisions (and, indeed, with the FCC's practice on its own E-rate appeal decisions), notices of SLD appeal decisions should be posted, as issued, on the SLD's Web site.

Assuming that the Commission accepts this appeal as timely, we ask, second, that the Commission remand the Administrator's decision to the SLD for reconsideration on the basis that the potentially ineligible portion of the funding request was significantly less than 30% and that the request should have been reduced accordingly rather than having been denied.

A copy of the Administrator's Decision on Appeal (just received, and enclosed as Attachment III) contains little new information. It does include a reputed total dollar amount of ineligible items included in the original request, but provides no breakdown of that total. The subsequent e-mail exchange suggests two possible sources of confusion.

1. WAN interface cards: In our appeal, we reluctantly accepted the point that these cards (at \$980.00) might be ineligible. As noted in the e-mail exchange, however, WAN interface cards have since been deemed eligible as Internal Connection devices. The SLD apparently believes that, since this is a recent decision, the cards were ineligible at the time of the Levittown appeal. We argue that WAN interface cards always should have been considered eligible and should be considered such in this appeal.
2. On-site technician: Charges for an on-site technician (at \$17,375) were listed in the attachment to the Form 471, but had been marked as "Ineligible" and had been excluded from the requested amount. This point was explicitly noted in our letter of appeal.

Accepting that the WAN interface cards are eligible, and that the on-site technician costs had never been included in the requested amount, the only potentially ineligible items would be an allocation for firewall warranty and installation. On this basis, we calculate the pre-discount value of potentially ineligible items as \$5,966.20 — only 6.4% of the total pre-discount \$93,729.50 request. At this level, the SLD should be instructed to reinstate funding, less the 6.4% ineligible amount, for the referenced FRN.

Respectfully submitted,

By: _____
Winston E. Himsworth
E-Rate Central
Nassau County BOCES
1196 Prospect Avenue
Westbury, NY 11590
On behalf of Levittown UFSD

Dated: November 27, 2000

Attachments: I - Levittown letter of appeal dated November 22, 1999
II - E-Rate Central/SLD e-mail exchange dated November 17-27, 2000
III - Administrator's Decision on Appeal dated May 10, 2000

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	<u>Attachment V</u>
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Levittown Union Free School District)	File No. SLD- 144841
Levittown, New York)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: January 26, 2001

Released: January 29, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. This Order dismisses the Letter of Appeal filed by Levittown Union Free School District (Levittown Union), Levittown, New York, seeking review of a decision issued by the Universal Service Administrative Company's Schools and Libraries Division on May 10, 2000.¹ The Commission received Levittown Union's Letter of Appeal on November 28, 2000.² Under section 54.720 of the Commission's rules, any such appeal must be filed within 30 days of the issuance of the decision as to which review is sought.³ Documents are considered to be filed with the Commission only upon receipt.⁴ Because the instant Letter of Appeal was not filed within the specified 30-day period, it will be dismissed without further consideration.

¹ See Letter from the Schools and Libraries Division, Universal Service Administrative Co., to Winston E. Himsworth, Levittown Union Free School District, dated May 10, 2000. Levittown asserts that it did not receive the May 10, 2000 decision letter, and became aware of the decision only after having contacted SLD. A review of the record indicates that SLD did issue an Administrator's Decision on Appeal on May 10, 2000. Merely stating that a letter was not received at the address provided to SLD and to which prior correspondence had been successfully mailed is insufficient grounds for reconsideration. See *Request for Review by Whitehall City School District*, Docket Nos. 96-45 and 97-21, Order, DA 00-1892 (rel. August 18, 2000); *Juan Galiano*, Memorandum Opinion and Order, 5 FCC Rcd 6442, 6443 (1990) ("[I]f the Commission were to entertain and accept unsupported arguments that letters mailed in Commission proceedings were not delivered... procedural havoc and abuse would result.").

² Letter from Winston E. Himsworth, to Federal Communications Commission, filed November 28, 2000 (Letter of Appeal).

³ 47 C.F.R. § 54.720.

⁴ 47 C.F.R. § 1.7.

2. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Letter of Appeal filed November 28, 2000, by Levittown Union Free School District, Levittown, New York, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau